

DOL Proposes New Rule Raising the Salary Threshold for White-Collar Overtime Exemptions

Practices

Employment & Labor Law

03.13.2019

Last week, the U.S. Department of Labor (DOL) issued a Notice of Proposed Rulemaking that would raise the minimum salary threshold required for workers to qualify for the overtime exemptions for executive, administrative and professional workers under the Fair Labor Standards Act (FLSA). The proposal increases the threshold for the white-collar exemptions to \$35,308 per year, or \$679 per week, up about \$12,000 from the current level of \$23,660 per year (\$455 per week). If approved, the DOL estimates the new rule would take effect in January 2020, and extend overtime protections to more than 1 million workers who are not currently eligible for overtime.

At present, “white-collar” employees – executives, administrative and professional employees – are exempt from overtime under the FLSA and are not required to be paid time and a half for hours worked over 40 in a given week if they 1) are compensated on a salary basis at a rate not less than \$455 per week; and 2) perform specific “duties” that are considered exempt. The proposed rule only addresses the “salary basis” test for these exemptions, and does not change the “duties” test.

If this sounds familiar, it is. In 2016, the DOL attempted to raise the threshold for white-collar exemptions for the first time since 2004, increasing it to \$47,476 per year. The rule was scheduled to take effect Dec. 1, 2016, but was enjoined by Texas federal judge weeks before it could be implemented.

The DOL’s latest proposal also seeks to raise the total compensation requirement to exempt “highly compensated employees” from \$100,000 to \$147,414 per year, and provides that employers may use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the standard salary level. The proposal also noted a commitment to periodically review and update the salary threshold, following a notice and comment period, and states that there will not be automatic adjustments to the salary threshold.

Once it is published in the Federal Register, the rule will be subject to a 60-day comment period, and it will be some time before it is finalized and enforced. Regardless, employers should keep this on their radar and begin developing a plan for transitioning any employees from exempt to non-exempt status who do not meet the duties test and new salary threshold for the white-collar exemptions.

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